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11 liability company dba Nevada Gold River, LLC,
12 a California limited liability corporation

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 GOLD RIVER, LLC, a Nevada limited liability company dba Nevada Gold River, LLC,)
11 a California limited liability corporation,)
12 Plaintiff,)
13 v.)
14 LA JOLLA BAND OF LUISEÑO MISSION INDIANS,)
15 .)
16 Defendant.)

Case No. **'11CV1750 JM BGS**

COMPLAINT

DEMAND FOR JURY TRIAL

18 Plaintiff, GOLD RIVER, LLC, a Nevada limited liability company dba Nevada Gold River,
19 LLC, a California limited liability corporation, brings this action against Defendant LA JOLLA
20 BAND OF LUISEÑO MISSION INDIANS, and alleges as follows:

I. PARTIES AND JURISDICTION

22 1. Plaintiff, GOLD RIVER, LLC, a Nevada limited liability company dba Nevada Gold
23 River, LLC, a California limited liability corporation (“Plaintiff”), is a Nevada limited liability
24 company, licensed to do business in the State of California as Nevada Gold River, LLC, a California
25 limited liability corporation.

26 2. Defendant, LA JOLLA BAND OF LUISEÑO MISSION INDIANS ("Defendant"), is
27 a federally-recognized Native American Indian Tribe having federally-recognized powers of self-
28 government, with Tribal Administrative Offices located at 22000 Highway 76, Pauma Valley,

1 County of San Diego, California 92061.

2 3. This Court has Federal Subject Matter Jurisdiction to adjudicate this action as relating
 3 to Indian rights and affairs and pertaining to Indian gaming, pursuant to 28 USC Section 1331,
 4 Sycuan Band of Mission Indians v. Roache (9th Cir. 1999) 38 F.3d 402, 405; and National Farmers
 5 Union Insurance Co. v. Crow Tribe (1985) 471 U.S. 845, 850-853.

6 4. This Court also has Diversity of Citizenship Jurisdiction to adjudicate this action,
 7 because Plaintiff is a Nevada limited liability corporation, with its principal place of business located
 8 in the City of Houston, Harris County, State of Texas, and Defendant is a federally-recognized, self-
 9 governing Indian Native American Tribe residing on tribal lands located within the County of San
 10 Diego, State of California. This Court therefore has Federal Diversity Jurisdiction pursuant to the
 11 United States Constitution, Article III, Section 2, and 28 U.S.C. section 1332, and because the matter
 12 in controversy exceeds \$75,000.00, exclusive of interest and costs.

13 5. This Court further has jurisdiction to adjudicate this action because Plaintiff and
 14 Defendant each consented in writing to the jurisdiction of this Court pursuant to the terms of a
 15 written Limited Recourse Promissory Note dated March 26, 2005, Article IV(c), a copy of which is
 16 attached hereto and incorporated herein by reference as Exhibit "A" ("the Note").

17 6. Venue is proper in the United States District Court, Southern District of California,
 18 pursuant to 28 U.S.C. section 1391(a)(1) and (c), in that Defendant resides in this judicial district and
 19 the parties expressly consented to venue in this judicial district pursuant to Article IV(c), and(d) of
 20 said the Note (Exhibit "A").

21 **II. STATEMENTS OF FACT**

22 7. On or about August 9, 2004, Plaintiff and Defendant entered into a formal business
 23 relationship pursuant to which Plaintiff was to assist Defendant to develop an Indian gaming casino
 24 and resort on Defendant's Tribal Land in Pauma Valley, California.

25 8. In connection therewith, on or about March 26, 2005, Defendant executed said written
 26 Note, as the "Maker", for the benefit of Plaintiff, as the "Holder", in the amount of \$1,500,000, in
 27 return for Plaintiff advancing investment monies to Defendant. The Note bears lawful interest at the
 28 rate of eight and one-half (8.5%) percent per annum (pursuant to Article I (d) of the Note. In

1 addition, pursuant to the terms of the Note, Plaintiff is entitled to a three (3%) percent financing fee
 2 of the principal amount of the Note, pursuant to Article I (d) thereof.

3 9. The total principal amount advanced by Plaintiff to Defendant pursuant to the Note is
 4 \$1,357,904.30. The accrued interest on the Note through the date of filing of this action, is
 5 approximately \$659,175.35.

6 10. Pursuant to Article I (b) of the Note, the outstanding principal balance due to Plaintiff
 7 under the Note is the principal amount of \$1,500,000.00, together with all accrued interest thereto,
 8 which was due and payable by Defendant in full on or before August 9, 2007.

9 11. Article II (a)(i) of the Note expressly provides that the failure by Defendant to timely
 10 pay the outstanding balance to Plaintiff, when due, constitutes an Event of Default.

11 12. To date, Defendant has made no repayment of the outstanding balance due, owing,
 12 and payable to Plaintiff, of either principal or interest, and pursuant to the express terms of the Note,
 13 Defendant is currently in Default on the Note.

14 13. There has been no extension of the term, or modifications of the term or date for
 15 payment of the Note.

16 14. Defendant is therefore in breach of the terms of the Note by reason of its failure to
 17 make the required payment to Plaintiff of principal and interest, and same is now past-due.

18 15. Pursuant to Article IV (a) of the Note, Defendant expressly granted Plaintiff a limited
 19 waiver of its Sovereign Immunity, and pursuant to Article IV (c)(i) of the Note, Defendant expressly
 20 consented to a lawsuit in this Court for actions brought by Plaintiff in connection with the
 21 enforcement of its rights against Defendant arising out of Defendant's Default of the Note.

22 **III. FIRST CLAIM FOR RELIEF**

23 **(Breach of Written Contract)**

24 16. Plaintiff incorporates herein each and every allegation set forth in paragraphs 1
 25 through 15, above, as though fully set forth at length herein.

26 17. Pursuant to the terms of the Note, Defendant was obligated to provide payment in full
 27 of all principal together with accrued interest at 8.5%, to Plaintiff no later than August 9, 2007.

28 18. The Note identifies Defendant's non-payment of the Note as an Event of Default.

19. Defendant has defaulted and breached the terms of the Note by failing to provide full payment of principal and interest to Plaintiff pursuant to the terms of the Note. To date, no payment of any monies which are due and owing to Plaintiff has been made by Defendant.

20. Plaintiff has performed all of its obligations required pursuant to the Note.

21. As a direct and proximate result of Defendant's breach of the Note as described herein, Defendant owes Plaintiff the principal sum of \$1,500,000.00, together with interest thereon at the rate of 8.5% per annum from August 9, 2007, the 3% financing fee, together with costs and expenses, including reasonable attorneys' fees and costs of court, pursuant to Article II(b)(iv) of the Note.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages in the amount of \$2,057,816.78, which amount includes the principal outstanding amount of \$1,500,000.00 under the Note, together with accrued interest at 8.5% per annum, and the 3% financing fee set forth in Article I(d) of the Note;
2. For reasonable attorneys' fees, costs, and expenses pursuant to Article II(b)(iv) of the Note;
3. For costs of suit incurred herein pursuant to Article II(b)(iv) of the Note; and
4. For such other and further relief as this Court deems just and proper.

DATED: August 5, 2011

**SCHWARTZ SEMERDJIAN
BALLARD & CAULEY, LLP**

By: s/ Dick A. Semerdjian
Dick A. Semerdjian
Keith A. Liker
Attorneys for Plaintiff Gold River, LLC,
a Limited Liability Corporation, dba
Nevada Gold River, LLC a California
corporation

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GOLD RIVER, LLC, a Nevada limited liability company dba Nevada Gold River, LLC,
a California limited liability corporation,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Schwartz Semerdjian Ballard & Cauley,
101 W. Broadway, Suite 810

San Diego, California 92101
619.236.8821

DEFENDANTS

LA JOLLA BAND OF LUISEÑO MISSION INDIANS,

County of Residence of First Listed Defendant SAN DIEGO

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV1750 JM BGS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY <input type="checkbox"/> 310 Airplane	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 810 Selective Service
<input checked="" type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY		CIVIL RIGHTS	SOCIAL SECURITY	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment	<input type="checkbox"/> 540 Mandamus & other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other	<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	
IMMIGRATION				
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Section 1331

Brief description of cause:
Indian rights and affairs; Breach of Contract by Indian Tribe

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ 2,057,817

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
8/5/2011

SIGNATURE OF ATTORNEY OF RECORD


FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____